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 and Satpal S. Kohli

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

AJANTA CORPORATION and  
 Kishore Kripalani  
 Plaintiffs  
 v.  
 GAYLORD, LLC and  
 Satpal S. Kohli  
 Defendants.

CASE NO. CASE NO. C07-2823 MJJ

MEMORANDUM OF POINTS AND AU-  
 THORITIES IN OPPOSITION TO MOTION  
 TO DISMISS FOR LACK OF JURISDIC-  
 TION, VENUE OR FOR TRANSFER

1. STATEMENT OF ISSUES TO BE DECIDED

1.1. Should the Court dismiss this action pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction over GAYLORD, LLC or Satpal S. Kohli ("Defendants" meaning either one of or both of them)?

1.2. Should the Court dismiss or transfer this action to the United States District Court for the District of Nevada because of improper venue?

2. STATEMENT OF RELEVANT FACTS

2.1. AJANTA CORPORATION and Kishore Kripalani ("Plaintiffs" meaning either one or both of them) are owners of or licensors to a number of restaurants in Northern California ("California Gaylord restaurants"), in Chicago and in other places in the United States under the famous trademark GAYLORD, registered in the United States Patent And Trademark Office to Plaintiffs.

2.2. The San Francisco area and Las Vegas area are major tourist centers and many patrons travel frequently back and forth between the two areas.

2.3. Plaintiff Kripilani is and has been a resident of California and owner and operator for many years of the world-famous GAYLORD INDIA RESTAURANT located at GHIRARDELLI SQUARE, 900 North Point Street, San Francisco, California, (the GHIRARDELLI RESTAURANT).

2.4. Defendant Gaylord was initially formed by Plaintiff Kripilani to do business under the name GAYLORD in the Rio Hotel in Las Vegas, Nevada (Las Vegas Gaylord) as an extension of the GAYLORD restaurants in California.

2.5. The décor, layout, operation, cooking, food, staff and other and other attributes of the Gaylord Las Vegas restaurant were planned from California and based upon the Plaintiffs' California Gaylord restaurants.

2.6. Defendant Ajanta Corporation is a California company and owner of the registered trademark GAYLORD.

2.7. Plaintiff Kripilani on or about June 17, 2004 sold his interest in Defendant Gaylord to Defendant Kohli pursuant to a MEMBERSHIP INTEREST PURCHASE AGREEMENT ("MIPA Agreement").

2.8. In about September of 2005, Plaintiffs first opened a new Plaintiffs' California Gaylord restaurants in Sausalito, CA.

2.9. The MIPA Agreement required, among other payments, an on going fee of 2% of Defendant Gaylord revenue. Also, it was required that Defendants enter into a Trademark license agreement with Plaintiffs in order to permit Defendants to continue to operate the

1 Las Vegas Gaylord restaurant under the famous trademark GAYLORD like used in the  
2 California Gaylord restaurants.

3 2.10. Defendants have stopped paying the required ongoing fee in clear breach of the  
4 MIPA Agreement.

5 2.11. Defendants refused to enter into a trademark license agreement and hence Defen-  
6 dants are not licensed to use the mark and infringe Plaintiffs' trademark rights.

7 2.12. Plaintiffs offered a trademark license to Defendants in order to enable Defendants  
8 to comply with Defendants' obligations to the Rio Hotel and Defendants refused the license  
9 choosing instead to infringe Plaintiffs' trademark rights and breach Defendants' obligations  
10 to the Rio Hotel.

11 2.13. Advertising by Defendants have depicted one of Plaintiffs' California Gaylord res-  
12 taurants and the Las Vegas Gaylord restaurant side by side whereby Defendants have inten-  
13 tionally caused confusion in California and done injury to Plaintiffs in California.

14 2.14. California Gaylord restaurants as a result of intentional acts of advertising by the  
15 Las Vegas Gaylord restaurant have received telephone calls from local California patrons  
16 trying to make reservations at the Las Vegas Gaylord restaurant.

17 2.15. As a result of the Las Vegas Gaylord advertising directed at patrons of California  
18 Gaylord restaurants, the patrons are surprised to learn that the Las Vegas Gaylord restaurant  
19 is a trademark infringer of Plaintiffs' trademark.

20 2.16. The poor business practices of Defendants have run the Las Vegas Gaylord busi-  
21 ness downhill and caused poor financial performance for the Las Vegas Gaylord so that De-  
22 fendants' intentional association of the Las Vegas Gaylord restaurant with Plaintiffs' Cali-  
23 fornia Gaylord restaurants intentionally aggravates the injury to Plaintiffs in California.

24 2.17. Plaintiffs expect to call at least as many residents of California as Defendants in-  
25 tends to call from Nevada to establish the damages caused by Defendants in California and  
26 the business that Defendants are doing and have done in California, including employees of  
27 the California Gaylord restaurants, vendors in California that provided goods and services to  
28

1 the Las Vegas Gaylord from California, Patrons in California that were confused by Defen-  
2 dants' deceptive advertising, advertising executives resident in California.

3  
4 **3. ARGUMENT**

5 **3.1. THIS ACTION SHOULD NOT BE DISMISSED BECAUSE THIS COURT CLEARLY HAS**  
6 **PERSONAL JURISDICTION OVER DEFENDANTS**

7 3.1.1. Defendant Gaylord is owned and controlled by Defendant Koholi and  
8 hence for purposes of this issue Defendants can be considered one and the same.  
9 Defendant Gaylord has extensive ties to California. All meetings and planning to  
10 establish the décor, layout, operation, cooking, food, staff and other attributes of  
11 the Gaylord Las Vegas restaurant were planned from, were discussed at meetings  
12 in and required extensive expenditures in California. The Gaylord Las Vegas res-  
13 taurant copied and was patterned upon the California Gaylord restaurants owned  
14 and licensed by Plaintiffs. All of the resources and efforts to make the Gaylord Las  
15 Vegas restaurant part of a family of licensed Gaylord restaurants occurred in Cali-  
16 fornia and intentionally was tied to the California Gaylord restaurants under the  
17 registered trademark GAYLORD.

18 3.1.2. Defendants continue to trade on the name and good will of Plaintiffs  
19 among patrons in California that are known to travel in large numbers to Las Ve-  
20 gas. Defendant targets ads to these patrons in California in a manner that is in-  
21 tended to confuse the patrons about the relationship between the Las Vegas Gay-  
22 lord restaurant and Plaintiffs' California Gaylord restaurants.

23 3.1.3. Defendants argue Plaintiffs placed the [www.usmenuguide.com](http://www.usmenuguide.com) ad for the  
24 Las Vegas Gaylord in the Rio Hotel. That ad for the the Rio Hotel wrongfully dis-  
25 plays Plaintiffs' California Gaylord restaurant in Sausalito, CA (which obviously  
26 is not located in the Rio Hotel in Las Vegas). Defendants argue that such ad was  
27 posted by Plaintiffs prior to June 17, 2004. Unfortunately for Defendants, Plain-  
28 tiffs' California Gaylord restaurant in Sausalito, CA did not come into existence

1 until September of 2005 more than a year after June 17, 2004. Regardless, Defen-  
2 dants knowingly rely on such ads with the clear intent to confuse the public in  
3 California about the relationship between Plaintiffs' California Gaylord restaurants  
4 and Defendants' Las Vegas Gaylord restaurant.

5 3.1.4. The Defendants' acts of intentionally confusing California patrons by sug-  
6 gesting that the Las Vegas Gaylord restaurant is related to Plaintiffs' California  
7 Gaylord restaurants is more than adequate contacts to support personal jurisdiction  
8 in California.

9 3.2. THIS ACTION SHOULD NOT BE DISMISSED OR TRANSFERRED BECAUSE OF IM-  
10 PROPER VENUE.

11 3.2.1. Under FED. R. CIV. P. 12(b)(3), in federal question cases such as this,  
12 venue is proper in the following judicial districts:

13 "...

14 (2) a judicial, district in which a substantial part of the events or omissions giving  
15 rise to the claim occurred, or a substantial part of property that is the subject of the  
16 action is situated, or

17 ..."

18 3.2.2. In the present case, a substantial part of the events giving rise to the claim  
19 occurred in California, to wit, advertising in California by Defendants both causing  
20 and relying upon grossly misleading ads such as the Las Vegas Gaylord restaurant  
21 ad for the Rio Hotel in Las Vegas that actually displays Plaintiffs California Gay-  
22 lord restaurant in Sausalito, CA. There are many similar confusing ads that con-  
23 fuse the Las Vegas Gaylord restaurant with Plaintiffs California Gaylord restau-  
24 rants.

25 3.2.3. The Defendants argue that a website cannot serve as an "act or transaction"  
26 in the forum state for venue purposes relying on *Equidyne Corp. v. Does*, 279  
27 F.Supp.2d 48 1,487 (D DE 2003). However, this argument is misplaced. The pre-  
28 sent facts are entirely different. Defendants' ads have shown side-by-side advertis-

1 ing of Defendants' Las Vegas Gaylord restaurant and one of Plaintiffs' California  
2 Gaylord restaurants. The Las Vegas Gaylord restaurant ad for the Rio Hotel in Las  
3 Vegas has dishonestly displayed Plaintiffs' Sausalito, CA Gaylord restaurant.  
4 These targeted misleading ads are far different from *Equidyne*.

5 3.2.4. A "a substantial part of property that is the subject of the action is situated"  
6 in northern California since three of the five of Plaintiffs' licensed or owned Gay-  
7 lord restaurants are located there. Of course, the GAYLORD trademark associated  
8 with these three out of five restaurants is a substantial part of the property that De-  
9 fendants are attempting to destroy.

10 3.2.5. Defendants argue that Nevada is more convenient for Defendants. Of  
11 course, Plaintiffs find the present court more convenient. None of Defendants' ar-  
12 guments are persuasive.

13  
14 Dated: September 25, 2007

15  
16  
17 By

18 /S/ David E. Lovejoy

19  
20 David E. Lovejoy  
21 Attorney for Plaintiffs  
22 AJANTA Corporation  
23 Kishore Kripalani  
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